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7  
8 **IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

9 SUNIL KUMAR, Ph. D., PRAVEEN  
10 SINHA, Ph. D.,

11 Plaintiffs,  
12 v.

13 DR. JOLENE KOESTER, in her official  
14 capacity as Chancellor of California State  
15 University,

16 Defendant.

Case No. 2:22-CV-07550-RGK-MAA

**FIRST AMENDED COMPLAINT  
DEMAND FOR JURY TRIAL**

Judge: Hon. R. Gary Klausner  
Trial Date: Not Set

17 **FIRST AMENDED COMPLAINT**

18 Plaintiffs, California State University professors Sunil Kumar, Ph.D  
19 (“Professor Kumar”) and Praveen Sinha, Ph.D (“Professor Sinha”) (collectively  
20 “Plaintiffs”), by and through their attorneys, Fox Rothschild LLP, hereby assert the  
21 following causes of action against Defendant, Dr. Jolene Koester, in her official  
22 capacity as Chancellor of California State University, (“Defendant”), as follows:

23 **INTRODUCTION**

24 1. On January 1, 2022, California State University (“CSU”) instituted an  
interim anti-discrimination policy that prohibits “[d]iscrimination based on any  
25 Protected Status: i.e., Age, Disability (physical and mental), Gender (or sex,  
26 including sex stereotyping), Gender Identity (including transgender), Gender  
27 Expression, Genetic Information, Marital Status, Medical Condition, Nationality,  
28

1 Race or Ethnicity (including color, *caste*, or ancestry), Religion (or religious creed),  
 2 Sexual Orientation, and Veteran or Military Status.” Ex. A, Interim CSU Policy  
 3 Prohibiting Discrimination, Harassment, Sexual Exploitation, Dating Violence,  
 4 Domestic Violence, Stalking and Retaliation (“Interim Policy”), at p. 1, Art. II (A)  
 5 (emphasis added).

6       2. Among the changes to the Interim Policy was the addition of “caste” to  
 7 discrimination based on Ethnicity.

8       3. Unfortunately, it appears that CSU either intentionally or implicitly  
 9 intended to wrongly and unfairly target members of the Indian/South Asian  
 10 community and adherents of the Hindu religion for disparate treatment under the  
 11 Interim Policy. For example, the State of California, under which CSU operates,  
 12 takes the position that “caste” is inextricably intertwined with the Hindu religion and  
 13 India/South Asia.

14       4. As detailed below, it seems that the intent was not the laudable goal of  
 15 broadly protecting individuals from discrimination based on, for example, social or  
 16 economic status in all of its forms, but, instead is directed to persons of Indian/South  
 17 Asian origin and in particular those who identify as, or are perceived to be,  
 18 practitioners of the Hindu religion.

19       5. Consequently, the Interim Policy seeks to define the Hindu religion as  
 20 including “caste” and an alleged oppressive and discriminatory caste system as  
 21 foundational religious tenets. That not only is an inaccurate depiction of the Hindu  
 22 religion, but the First Amendment to the United State Constitution prohibits  
 23 California and CSU from defining the contours of Hinduism (or any religion). *See,*  
 24 *e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S.Ct. 2049, 2060 (2020)  
 25 (“the Religion Clauses protect the right of churches and other religious institutions to  
 26 decide matters of faith and doctrine without government intrusion.”); *Commack Self-*  
 27 *Serv. Kosher Meats, Inc. v. Weiss*, 294 F.3d 415, 427 (2d. Cir. 2002) (Establishment

1 Clause violated where law “require[s] New York to adopt an official State position  
 2 on a point of religious doctrine”).

3       6. The Interim Policy also singles out only CSU’s Hindu employees,  
 4 professors and students, as well as those of Indian/South Asian origin. No other  
 5 Protected Status in the Interim Policy addresses any specific ethnicity, ancestry,  
 6 religion or alleged religious practice “[A]ny official action that treats a person  
 7 differently on account of his race or ethnic origin is inherently suspect.” *Fisher v.*  
 8 *Univ. of Tex.*, 570 U.S. 297, 310 (2013) (quoting *Fullilove v. Klutznick*, 448 U.S. 448,  
 9 523 (1980) (Stewart, J., dissenting) (internal quotation marks omitted)). That is the  
 10 case “even for so-called ‘benign’ racial classifications . . . .” *Johnson v. Calif.*, 543  
 11 U.S. 499, 505 (2005) (citations omitted). As a result, the Interim Policy violates the  
 12 Equal Protection Clause of the Fourteenth Amendment.

13       7. Further, the Interim Policy does not define “caste” among its 44  
 14 specifically defined terms. “Caste” is not a term understood by people of ordinary  
 15 intelligence; indeed, many of the CSU employees, professors and students who will  
 16 be governed by the Interim Policy are unfamiliar with the term or its meaning or  
 17 contexts. Therefore, the Interim Policy is unconstitutionally vague in violation of the  
 18 Due Process Clause of the Fourteenth Amendment.

19       8. Plaintiffs are Hindu professors at CSU who are of Indian descent. They  
 20 bring this action to prevent Defendant from enforcing the Interim Policy and to  
 21 safeguard their constitutional rights, as well as the rights of other CSU employees,  
 22 professors and students who are similarly situated.

23       9. While Plaintiffs applaud CSU’s effort to take a firm stance in favor of  
 24 inclusion and against discrimination – something on which they are in complete  
 25 agreement – the addition of “caste” as a form of “Ethnicity” in the Interim Policy’s  
 26 Protected Statuses unfairly singles out and targets them as persons of Indian/South  
 27 Asian origin and members of the Hindu religion.

10. By this lawsuit, Plaintiffs seek a determination that the term “caste” as used in the Interim Policy is unconstitutionally vague, and the Interim Policy as drafted violates the rights of Plaintiffs (and similarly situated individuals) under the First and Fourteenth Amendments to the United States Constitution, as well as their rights under the California Constitution.

11. CSU does not need to include the pejorative and demeaning term “caste” to protect persons of Indian/South Asian descent or those who identify with, or are perceived to be, practitioners of the Hindu religion since its policy already precludes discrimination specifically based on ethnicity and religion.

12. Plaintiffs also seek an injunction to prohibit Defendant from enforcing the unconstitutional Interim Policy.

13. The harm at issue here is significant. As the Supreme Court has repeatedly held, the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

14. That is precisely what the Interim Policy does by seeking to define the Hindu religion as including caste and an alleged oppressive and discriminatory caste system, and by singling out only adherents of the Hindu religion and those of Indian/South Asian descent.

## PARTIES

15. Plaintiffs hereby incorporate by reference the foregoing paragraphs as though fully set forth herein.

16. Plaintiff Sunil Kumar, Ph. D., is a Professor of Electrical Engineering and the Thomas G. Pine Faculty Fellow in the ECE Department at San Diego State University, which is a CSU school. Professor Kumar was born in India and is an adherent of Hinduism.

1       17. Plaintiff Praveen Sinha, Ph. D., is a professor of Accountancy in the  
2 College of Business Administration at California State University, Long Beach,  
3 which is a CSU school. Professor Sinha was born in India and is an adherent of  
4 Hinduism.

5       18. Both Professor Kumar and Sinha hold the sincere religious belief that  
6 neither caste nor a discriminatory caste system are in any way part of the Hindu  
7 religion or its teachings. To the contrary, they abhor the notion that a caste system is  
8 a tenet of Hinduism and sincerely believe that the Hindu religion's core principals  
9 are compassion, equanimity, generosity, and equal regard for all humans in order to  
10 honor the divine in everyone, which is directly contrary to a discriminatory caste  
11 system.

12       19. In addition, Plaintiffs do not identify as being members of any caste and  
13 fear that CSU will ascribe a caste to them under the Interim Policy. Indeed, how else  
14 will CSU be able to determine if discrimination based on caste occurred unless they  
15 ascribe a caste not only to the allegedly discriminating actor but to the alleged victim  
16 as well?

17       20. By linking the Hindu religion with a caste system and caste  
18 discrimination, California and CSU have infringed the constitutional rights of  
19 Plaintiffs by singling out their religious beliefs for ridicule, by seeking to define the  
20 Hindu religion's practices and customs as including a caste system, and by  
21 improperly ascribing to it an oppressive and discriminatory intent.

22       21. Further, the use of caste in the Interim Policy singles out Plaintiffs and  
23 others from India/South Asia.

24       22. Plaintiffs fully support efforts to end all discrimination on CSU  
25 campuses, and elsewhere, that are consistent with the United States and California  
26  
27

Constitutions, and which do not single out any religion, alleged religious practice or group of individuals (like Indians and South Asians or Hindus).<sup>1</sup>

3       23. California State University, which is not a Party to this action, is a public  
4 university operated by the State of California with 23 campuses across the State. *See*  
5 *Steshenko v. Gaynard*, 44 F. Supp. 3d 941, 949 (N.D. Cal. 2014) (citing *Stanley v.*  
6 *Trs. Of the Cal. State. Univ.*, 433 F.3d 1129, 1133 (9th Cir. 2006)); The California  
7 State University, The CSU System, About the CSU, <https://www.calstate.edu/csusystem/about-the-csu/Pages/default.aspx> (last visited Sept. 16, 2022).

9       24. Defendant Dr. Jolene Koester is the Chancellor of CSU, who is  
10 responsible for adopting and/or enforcing the Interim Policy. She is named as a  
11 Defendant in this lawsuit in her official capacities only.

12        25. Defendant is considered to be an arm of the State of California.  
13 However, because Defendant is being sued in her official capacity for prospective  
14 injunctive relief, the sovereign immunity provisions of the Eleventh Amendment do  
15 not apply to them.

## **JURISDICTION AND VENUE**

17        26. Plaintiffs hereby incorporate by reference the foregoing paragraphs as  
18 though fully set forth herein.

19       27. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331  
20 because this case arises under the laws and Constitution of the United States;  
21 specifically, 42 U.S.C. § 1983 *et seq.*

24       <sup>1</sup> Had the Interim Policy used neutral and generally applicable terms to broadly  
25       protect individuals from discrimination based on, for example, social or economic  
26       status in all of its forms, Plaintiffs would not have filed this action. Instead, the  
27       Interim Policy uses a term that California associates only to Hinduism and that also  
      is directly targeted to people of Indian/South Asian descent.

28. This Court should exercise supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1337 because the state law claims arise from the same case or controversy that give rise to jurisdiction under 28 U.S.C. § 1331.

29. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because all of the claims asserted by Plaintiffs arose within this District.

## FACTUAL BACKGROUND

30. Plaintiffs hereby incorporate by reference the foregoing paragraphs as though fully set forth herein.

## The Interim Policy

31. The Interim Policy, effective as of January 1, 2022, applies to CSU employees, professors (like Plaintiffs here) and students. Ex. A, Interim Policy at p. 1. It prohibits, among other things, discrimination and harassment for a number of Protected Statuses, which consist of: Age, Disability, Gender, Gender Identity, Gender Expression, Genetic Information, Marital Status, Medical Condition, Nationality, “***Race or Ethnicity (including color, caste, or ancestry)***,” Religion (or religious creed), Sexual Orientation, and Veteran or Military Status. *Id.* at p. 1, Art. II (emphasis added).

32. The Interim Policy further provides that “[e]mployees who are found to have violated [it] will be subject to discipline that is appropriate for the violation and in accordance with state and federal requirements and other CSU policies.” *Id.* at p. 42, Interim Procedures, Art. I(A).

33. In addition to prohibiting discrimination and harassment based on Ethnicity, which now specifically includes caste, CSU employees (like Plaintiffs) have an affirmative duty to “promptly report” any discriminatory or harassing incidents. *Id.* at p. 3, Art. V(A).

1       34. Significantly, however, “caste” is not among the 44 specifically defined  
 2 terms in the Interim Policy nor does it provide any explication of how caste equates  
 3 in any way with ethnicity. *Id.* at pp. 6–16, Art. VII(A)(B).

4       35. Caste is not a term that is familiar to the vast majority of CSU  
 5 employees, professors or students. *See* Ex. B, Jan. 18, 2022 Equality Labs Press  
 6 Release at p. 2 (quoting Prof. Dr. Sarah Taylor, Chair, Dept. of Social Work, CSU  
 7 East Bay that, “[f]or many of us, caste is not yet part of our regular lexicon, but it  
 8 needs to be.”).

9       36. Thus, employees are left to guess – at their peril – what constitutes  
 10 reportable conduct. Similarly, an employee or student who is unfamiliar with “caste”  
 11 could be accused of violating the Interim Policy despite the lack of definition.

12       **CSU Equates Caste Only to the Hindu Religion and India/South Asia**

13       37. The State of California, under which CSU operates, takes the position  
 14 that caste is inextricably intertwined with the Hindu religion and India. Specifically,  
 15 the California Department of Civil Rights, formerly known as the Department of Fair  
 16 Employment and Housing (“DFEH”)<sup>2</sup> describes “*India’s* caste system” as “a strict  
 17 **Hindu** social and **religious** hierarchy . . . based on [a person’s] **religion, ancestry, national origin/ethnicity**, and race/color . . . .” that mandates discrimination and  
 18 segregation of certain castes “by social custom and legal mandate.” Ex. C, Complaint  
 19 in *Doe v. Cisco* (pending before the Superior Court of California, Santa Clara  
 20 County) (“Doe Compl.”) at ¶ 1; *Id.* at ¶ 62 (emphasis added) (alleging that the  
 21 California Fair Employment and Housing Act “prohibits harassment based on the  
 22 employee’s protected characteristics including, but not limited to, their caste, which  
 23 includes **religion, ancestry, national origin/ethnicity, and race/color**”); *id.* at ¶¶ 63–  
 24 64 (same).

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26       2 As of June 30, 2022, DFEH is now known as the Civil Rights Department.  
 27

1       38. In addition, in promulgating the Interim Policy, CSU had the support of,  
2 and upon information and belief relied on, resolutions passed by the California  
3 Faculty Association (“CFA”) and California State Student Association (“CSSA”),  
4 which equate “caste” to people of only Indian (South Asian) origin and the Hindu  
5 religion, and (incorrectly) conclude that “[c]aste is present in the ***Hindu religion and***  
6 ***common in communities in South Asia and in the South Asian Diaspora . . .***” Ex.  
7 D, CFA Resolution at p. 1 (emphasis added); *see also* Ex. E, CSSA Resolution.

8       39. Thus, as is clear from the express language of the Interim Policy,  
9 California's position in currently pending litigation, and the CFA and CSSA  
10 Resolutions relied on by CSU, "caste" is the only Protected Status in the Interim  
11 Policy that targets a specific religion and a specific class of CSU employees,  
12 professors and students on the basis of nationality or ethnicity; all of the other  
13 categories are neutral and generally applicable.

## LEGAL FRAMEWORK

15       40. Plaintiffs hereby incorporate by reference the foregoing paragraphs as  
16 though fully set forth herein.

## The First Amendment

18        41. The First Amendment to the United States Constitution provides, in part,  
19 that “Congress shall make no law respecting an establishment of religion, or  
20 prohibiting the free exercise thereof.” U.S. CONST. amend I (the “Religion Clauses”).

21        42. Those Religion Clauses are the basis of the religious freedoms enjoyed  
22 in the United States.

23           43. The Religion Clauses are applicable to the States under the Fourteenth  
24 Amendment. *See, e.g., Kennedy v. Bremeton Sch. Dist.*, 142 S. Ct. 2407, 2421  
25 (2022).

26 44. The Religion Clauses have “‘complementary’ purposes, not warring  
27 ones where one Clause is always sure to prevail over the other . . .” *Id.* at 2426

1 (quoting *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 13 (1947)). As the Supreme  
 2 Court recently held:

3 Among other things, ***the Religion Clauses protect the right of***  
 4 ***churches and other religious institutions to decide matters of faith***  
 5 ***and doctrine without government intrusion.*** State interference in that  
 6 sphere would obviously violate the free exercise of religion, and ***any***  
 7 ***attempt by government to dictate or even influence such matters***  
 8 ***would constitute one of the central attributes of an establishment of***  
 9 ***religion. The First Amendment outlaws such intrusion.***

10 *Our Lady of Guadalupe Sch.*, 140 S.Ct. at 2060 (internal punctuation and citations  
 11 omitted) (emphasis added).

12 45. As the Supreme Court held long ago, “when . . . presented with a state  
 13 law granting a denominational preference, [Supreme Court] precedents demand that  
 14 [courts] treat the law as suspect and that [courts] apply strict scrutiny in adjudging its  
 15 constitutionality.” *Larson v. Valente*, 456 U.S. 228, 246–48 (1982); *see also Trump*  
 16 *v. Hawaii*, 138 S. Ct. 2392, 2417 (2018); *Washington v. Trump*, 847 F.3d 1151, 1167  
 17 (9th Cir. 2017).

18 46. This case now before the Court “pits two competing values that we  
 19 cherish as a nation: the principle of non-discrimination on the one hand, and the First  
 20 Amendment’s protection of free exercise of religion on the other hand. . . . ***Under***  
 21 ***the First Amendment, our government must be scrupulously neutral when it comes***  
 22 ***to religion: It cannot treat religious groups worse than comparable secular ones.***”  
*Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, No. 22-  
 23 15827, 2022 WL 3712506, at \*\*2–3 (9th Cir. 2022) (emphasis added).

24 47. Specifically, state actors like Defendant cannot single out particular  
 25 religions for ridicule by ascribing to them tenets that are not part of their faith and  
 26 that members of that faith find repugnant.

27 48. The First Amendment ***requires*** that government “proceed in a manner  
 28 neutral toward and tolerant” of people’s “religious beliefs.” *Masterpiece Cakeshop*

1 *Ltd. v. Colo. C.R. Comm'n*, 138 S.Ct. 1719, 1731 (2018). And, while neutrality is  
2 compelled as between religious and secular groups, there must be “strict adherence  
3 to the ‘principal of denominational neutrality . . . .’” where, as here, one religion is  
4 treated differently than all others. *Adair v. England*, 183 F. Supp.2d 31, 48 (D.D.C.  
5 2002) (quoting *Larson*, 456 U.S. at 246–47). This has been bedrock constitutional  
6 law for decades. *See, e.g., Larson*, 456 U.S. at 246 (quoting *Abington Sch. Dist. v.*  
7 *Schempp*, 374 U.S. 203, 305 (1963) (internal punctuation omitted) (“the fullest  
8 realization of true religious liberty requires that government effect no favoritism  
9 among sects and that it work deterrence of no religious belief”)); *Epperson v.*  
10 *Arkansas*, 393 U.S. 97, 98 (1968) (emphasis added) (citations omitted) (“The First  
11 Amendment mandates governmental neutrality between religion and religion . . . .  
12 The State may not aid or oppose any religion . . . . This prohibition is absolute.”).

13        49. The Interim Policy violates those basic tenets of the Religion Clauses  
14 by ascribing an oppressive and discriminatory caste system to the entire Hindu  
15 religion. In this manner, the Interim Policy ascribes a negative (and false) attribute  
16 to a particular faith – Hinduism – that is not neutral or generally applicable since it  
17 singles out only a supposed practice of the Hindu religion.

18        50. Not only is California constitutionally prohibited from linking a caste  
19 system with the Hindu religion, that conclusion is simply wrong.

20       51. Indeed, Plaintiffs here do not believe in nor engage in caste  
21 discrimination at all. Rather, they abhor it, as they abhor all forms of discrimination.  
22 It is their sincerely held religious belief that the Hindu religion in no way includes or  
23 endorses an oppressive and discriminatory caste system, yet CSU and the State have  
24 now told them that it is a part of their religion.

## **The Equal Protection Clause**

26        52. The Equal Protection Clause of the Fourteenth Amendment “prohibits  
27 the government from classifying people based on suspect classes, unless the

1 classification is narrowly tailored to satisfy a compelling governmental interest . . .  
2 .” *Al Saud v. Days*, 36 F.4th 949, 953 (9th Cir. 2022) (citing *Kadmas v. Dickinson*  
3 *Pub. Sch.*, 487 U.S. 450, 457–58 (1988)).

4 53. “[A]ny official action that treats a person differently on account of his  
5 race or ethnic origin is inherently suspect.” *Fisher*, 570 U.S. at 310 (quoting  
6 *Fullilove*, 448 U.S. at 523).

7 54. Consequently, the general rule is that when a state actor explicitly treats  
8 an individual differently on the basis of race, strict scrutiny is applied. *Id.*; *Johnson*,  
9 543 U.S. at 505; *Adarand Const., Inc. v. Pena*, 515 U.S. 200, 227 (1995). The  
10 Supreme Court has “insisted on strict scrutiny in every context, even for so-called  
11 ‘benign’ racial classifications, such as race-conscious university admissions policies,  
12 race-based preferences in government contracts, and race-based districting intended  
13 to improve minority representation.” *Johnson*, 543 U.S. at 505.

14 55. Race, ethnicity, national origin and religion are protected classes under  
15 the Equal Protection Clause. *See, e.g.*, *Days*, 36 F. 4th 954; *Mitchell v. Washington*,  
16 818 F.3d 436, 444–45 (9th Cir. 2018).

17 56. By drafting the Interim Policy to specifically include caste within the  
18 meaning of ethnicity, CSU impermissibly singled out Hindu employees, professors  
19 (like Plaintiffs) and students, and those of Indian/South Asian origin, based on their  
20 perceived national origin or ancestry (Indian/South Asian) and religion (Hinduism).

21 57. The Interim Policy singles out Plaintiffs (as well as others similarly  
22 situated) with inaccurate stereotypes – that they adhere to a “caste system”  
23 characterized as a racist and inhumane system of discrimination and violence against  
24 others. Ex. E, CSSA Resolution at p. 1 (erroneously concluding that caste is “a  
25 structure of oppression,” where “[c]aste oppressed groups . . . experience brutal  
26 violence at the hands of ‘upper’ castes . . .”).

## The Due Process Clause – Vagueness

58. The Due Process Clause of the Fourteenth Amendment requires:

First, laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. . . . The vagueness doctrine's second requirement aims to avoid arbitrary and discriminatory enforcement, and demands that laws provide explicit standards for those who apply them. A law that relies on a subjective standard—such as whether conduct amounts to an annoyance—is constitutionally suspect.

*Edge v. City of Everett*, 929 F.3d 657, 664–65 (9th Cir. 2019) (internal citations and quotation marks omitted); *see also Arce v. Douglas*, 793 F.3d 968, 988 (9th Cir. 2015). This is referred to as the vagueness doctrine. *See Edge*, 929 F.3d at 664.

59. In sum, while a statute or policy need not be perfectly clear in order to survive a vagueness challenge, it must nonetheless provide a code of conduct that ordinary citizens can follow to reasonably avoid violation. *See Wal-Mart Stores, Inc. v. City of Turlock*, 483 F. Supp.2d 987, 1021 (E.D. Cal. 2006) (internal citations and quotation marks omitted) (“If a statute is not sufficiently clear to provide guidance to citizens concerning how they can avoid violating it and to provide authorities with principles governing enforcement, the statute is invalid.”); *Santa Cruz Lesbian & Gay Comm. Ctr. v. Trump*, 508 F. Supp.3d 521, 536 (N.D. Cal. 2020) (executive orders considered void for vagueness when they left plaintiffs unsure as to whether they could continue providing diversity and inclusion training without violating them).

60. The Interim Policy is unconstitutionally vague to the extent that it prohibits discrimination based on “caste.”

61. While the Interim Policy defines 44 terms, “caste” is not one of them (Ex. A, Interim Policy at pp. 6–16, Art. VII(A)(B)), and the Interim Policy provides no other explanation for why it includes “caste” within the meaning of “Ethnicity.”

62. Even those of Indian origin or those who identify as Hindu may very well be unfamiliar with what caste means because there simply is no universally agreed upon definition and because it is a foreign concept. *See Nani Walker, Cal. State system adds caste to anti-discrimination policy in groundbreaking decision, L.A. TIMES (Jan. 20, 2022)* <https://www.latimes.com/california/story/2022-01-20/csu-adds-caste-to-its-anti-discrimination-policy> (noting that “[f]or most South-Asians, caste practice in the U.S. is a faraway and foreign concept”).

63. But more importantly, “caste” is not a term that is familiar to the vast majority of CSU employees, professors or students. *See* Ex. B, Jan. 18, 2022 Equality Labs Press Release at p. 2 (quoting Prof. Dr. Sarah Taylor, Chair, Dept. of Social Work, CSU East Bay that “[f]or many of us, caste is not yet part of our regular lexicon, but it needs to be”).

## **CLAIMS**

## **FIRST CLAIM FOR DECLARATORY JUDGMENT**

64. Plaintiffs hereby incorporate by reference the foregoing paragraphs as though fully set forth herein.

65. Plaintiffs have viable claims under the First and Fourteenth Amendments to the United States Constitution as explained herein.

66. Consequently, Plaintiffs certainly face impending injuries under the Interim Policy.

67. A declaratory judgment holding the Interim Policy unconstitutional, and thus unenforceable, as to caste discrimination will relieve the Plaintiffs of their very realistic fears of impending injury. *See Crossley v. Cal.*, 479 F. Supp.3d 901, 920 (S.D. Cal. 2020) (quoting *Steffel v. Thompson*, 415 U.S. 452, 460 (1974) (In order to prevail on a claim for declaratory relief, “[t]he plaintiff must demonstrate that the probability of [a] future [undesirable] event is real and substantial [and] ‘of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.’”)).

68. Plaintiffs are therefore entitled to declaratory relief declaring the Interim Policy to be unconstitutional to the extent that it references “caste” and to injunctive relief enjoining Defendant from enforcing the “caste” provision of the Interim Policy.

**SECOND CLAIM FOR VIOLATION OF FREE EXERCISE CLAUSE OF  
THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION –  
42 U.S.C. § 1983**

69. Plaintiffs hereby incorporate by reference the foregoing paragraphs as though fully set forth herein.

70. 42 U.S.C. §1983 prohibits any state actor or person acting under color of state law from depriving others of their rights, privileges, or immunities under the United States Constitution.

71. Defendant was a state actor and/or acting under color of state law when the Interim Policy was promulgated.

72. Defendant is a state actor and/or acting under color of state law in enforcing the Interim Policy.

73. Violations of the First Amendment are actionable under 42 U.S.C. § 1983.

74. “The [Free Exercise Clause of the] First Amendment protects the right of religious institutions ‘to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’” *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2055 (citing *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

75. The Interim Policy violates the Free Exercise Clause of the First Amendment by, *inter alia*, defining the contours and practices of the Hindu religion by impermissibly (and erroneously) concluding that inherent to the teachings and

1 practices of Hinduism is a “caste system” characterized as a racist and inhumane  
2 system of discrimination and violence against others.

3       76. The Interim Policy is neither neutral nor generally applicable in that it,  
4 *inter alia*, refers to caste (which California and CSU consider to be a “religious  
5 practice” of Hinduism); is being specifically applied only to the Hindu religion; and  
6 does not apply to any other sincerely-held religious beliefs.

7       77. The Interim Policy is not narrowly tailored to meet a compelling  
8 government interest.

9       78. As a result of the Interim Policy violating the Free Exercise Clause,  
10 Plaintiffs have suffered a *de facto* irreparable injury.

11       79. Enforcing the Interim Policy will not only cause Plaintiffs (and others  
12 similarly situated) to live with the fear of being disciplined for committing  
13 discrimination they did not commit, such accusations – and indeed the mere  
14 stereotypes and implicit bias the Interim Policy has perpetuated – will follow them  
15 throughout the rest of their careers.

16       80. Similarly, because the Interim Policy does not describe what  
17 repercussions exist for alleged “caste” discrimination (or even explain what “caste”  
18 discrimination is), *any* employee within the CSU system, regardless of their ancestry  
19 or actual religious beliefs, could be subject to losing privileges at the university, their  
20 tenures, or even their professorship positions, if they are even *accused of* caste  
21 discrimination.

22       81. Plaintiffs have no adequate remedy at law to prevent or redress the  
23 irreparable injuries alleged herein.

24       82. Unless Defendant is enjoined and restrained from enforcing the portion  
25 of the Interim Policy applying caste as a Protected Status, Plaintiffs will be  
26 irreparably injured, as they will be deprived of their rights under the United States  
27 Constitution forever.

1       83. As Plaintiffs' constitutional violations are ongoing and capable of  
2 repetition, Plaintiffs are entitled to injunctive relief.

3       84. Because Defendant's actions required Plaintiffs to retain counsel and  
4 incur attorneys' fees and costs to bring this action, Plaintiffs are entitled to the  
5 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and  
6 42 U.S.C. § 1988(b).

7

8                   **THIRD CLAIM FOR VIOLATION OF THE ESTABLISHMENT CLAUSE**  
9                   **OF THE FIRST AMENDMENT TO THE UNITED STATES**  
10                   **CONSTITUTION – 42 U.S.C. § 1983**

11       85. Plaintiffs hereby incorporate by reference the foregoing paragraphs as  
12 though fully set forth herein.

13       86. CSU and California, through the Interim Policy and elsewhere, have  
14 unilaterally determined that the contours of Hinduism include caste and an oppressive  
15 and discriminatory caste system.

16       87. No other religion or religious practice is included in the Interim Policy.

17       88. The Interim Policy is not narrowly tailored to meet a compelling  
18 government interest.

19       89. Defendant was a state actor and/or acting under color of state law when  
20 the Interim Policy was promulgated.

21       90. Defendant is a state actor and/or acting under color of state law in  
22 enforcing the Interim Policy.

23       91. As a result of the Interim Policy violating the Establishment Clause,  
24 Plaintiffs have suffered a *de facto* irreparable injury.

25       92. Enforcing the Interim Policy will not only cause Plaintiffs (and others  
26 similarly situated) to live with the fear of being disciplined for committing  
27 discrimination they did not commit, such accusations – and indeed the mere

1 stereotypes and implicit bias the Interim Policy has perpetuated – will follow them  
2 throughout the rest of their careers.

3        93. Similarly, because the Interim Policy does not describe what  
4        repercussions exist for alleged “caste” discrimination (or even explain what “caste”  
5        discrimination is), **any** employee within the CSU system, regardless of their ancestry  
6        or actual religious beliefs, could be subject to losing privileges at the university, their  
7        tenures, or even their professorship positions, if they are even **accused of** caste  
8        discrimination.

9       94. Plaintiffs have no adequate remedy at law to prevent or redress the  
10      irreparable injuries alleged herein.

11        95. Unless Defendant is enjoined and restrained from enforcing the portion  
12 of the Interim Policy applying caste as a Protected Status, Plaintiffs will be  
13 irreparably injured, as they will be deprived of their rights under the United States  
14 Constitution forever.

15        96. As Plaintiffs' constitutional violations are ongoing and capable of  
16 repetition, Plaintiffs are entitled to injunctive relief.

17        97. Because Defendant's actions required Plaintiffs to retain counsel and  
18 incur attorneys' fees and costs to bring this action, Plaintiffs are entitled to the  
19 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and  
20 42 U.S.C. § 1988(b).

## **FOURTH CLAIM FOR VIOLATION OF THE NO PREFERENCE AND ESTABLISHMENT CLAUSES OF THE CALIFORNIA CONSTITUTION**

24       98. Plaintiffs hereby incorporate by reference the foregoing paragraphs as  
25 though fully set forth herein.

26        99. The No Preference and Establishment Clauses of the California  
27 Constitution (the “Religion Clauses of the California Constitution”) provide that

1        “[f]ree exercise and enjoyment of religion without discrimination or preference are  
2        guaranteed . . . . The Legislature shall make no law respecting an establishment of  
3        religion.” Cal. Const., art. I, § 4.

4        100. The Religion Clauses of the California Constitution offer religion the  
5        same, if not more, protections as those under the Federal Constitution. *See Barnes*  
6        *Wallace v. City of San Diego*, 704 F.3d 1067, 1082 (9th Cir. 2012). Accordingly,  
7        Defendant has violated the Religion Clauses of the California Constitution for  
8        reasons discussed *supra*.

9        101. The Interim Policy does not satisfy strict scrutiny for the reasons  
10        discussed *supra*.

11        102. Enforcing the Interim Policy will not only cause Plaintiffs (and others  
12        similarly situated) to live with the fear of being disciplined for committing  
13        discrimination they did not commit, such accusations – and indeed the mere  
14        stereotypes and implicit bias the Interim Policy has perpetuated – will follow them  
15        throughout the rest of their careers.

16        103. Similarly, because the Interim Policy does not describe what  
17        repercussions exist for alleged “caste” discrimination (or even explain what “caste”  
18        discrimination is), *any* employee within the CSU system, regardless of their ancestry  
19        or actual religious beliefs, could be subject to losing privileges at the university, their  
20        tenures, or even their professorship positions, if they are even *accused of* caste  
21        discrimination.

22        104. Unless Defendant is enjoined and restrained from enforcing the portion  
23        of the Interim Policy applying caste as a Protected Status, Plaintiffs will be  
24        irreparably injured, as they will be deprived of their rights under the United States  
25        Constitution forever.

26        105. As Plaintiffs’ constitutional violations are ongoing and capable of  
27        repetition, Plaintiffs are entitled to immediate and permanent injunctive relief.

**FIFTH CLAIM FOR VIOLATION OF THE EQUAL PROTECTION  
CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED  
STATES CONSTITUTION – 42 U.S.C. § 1983**

106. Plaintiffs hereby incorporate by reference the foregoing paragraphs as though fully set forth herein.

107. Pursuant to the Fourteenth Amendment to the United States Constitution, no state shall “deny to any person within its jurisdiction the equal protection of the laws.”

108. Violations of the Equal Protection Clause are actionable under 42 U.S.C. § 1983.

109. The Equal Protection Clause “prohibits the government from classifying people based on suspect classes, unless the classification is narrowly tailored to satisfy a compelling governmental interest (*i.e.*, the government’s action passes strict scrutiny).” *Days*, 36 F.4th at 953 (citing *Kadmas*, 487 U.S. at 457–58).

110. The Interim Policy creates *de facto* suspect classes by targeting Hindus (religion) and people of Indian/South Asian descent (ancestry) while no other religion or ancestry is treated similarly.

111. Defendant was a state actor and/or acting under color of state law when the Interim Policy was promulgated.

112. Defendant is a state actor and/or acting under color of state law in enforcing the Interim Policy.

113. The Interim Policy singles out Plaintiffs, as well as other Hindu CSU employees, professors and students and those of Indian/South Asian origin.

114. By including “caste” in the Interim Policy, Defendant impermissibly created, and therefore targeted, suspect classes of Hindu CSU employees, professors, and students and those of Indian/South Asian origin.

1           115. No other religion, alleged religious practice, or ancestry are contained  
2 in the Interim Policy.

3           116. Plaintiffs have no adequate remedy at law to prevent or redress the  
4 irreparable injuries alleged herein.

5           117. Unless Defendant is enjoined and restrained from enforcing the portion  
6 of the Interim Policy applying caste as a Protected Status, Plaintiffs will be  
7 irreparably injured, as they will be deprived of their rights under the United States  
8 Constitution forever.

9           118. As Plaintiffs' constitutional violations are ongoing and capable of  
10 repetition, Plaintiffs are entitled to injunctive relief.

11           119. Because Defendant's actions required Plaintiffs to retain counsel and  
12 incur attorneys' fees and costs to bring this action, Plaintiffs are entitled to the  
13 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and  
14 42 U.S.C. § 1988(b).

15

16           **SIXTH CLAIM FOR VIOLATION OF THE EQUAL PROTECTION**  
17           **CLAUSE OF THE CALIFORNIA STATE CONSTITUTION RELIEF**

18           120. Plaintiffs hereby incorporate by reference the foregoing paragraphs as  
19 though fully set forth herein.

20           121. "The equal protection analysis under the California Constitution is  
21 substantially similar to analysis under the federal Equal Protection Clause." *Cal.*  
22 *Growers Ass'n v. City of Long Beach*, 521 F. Supp.3d 902, 912 (C.D. Cal. 2021)  
23 (quoting *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1154 (9th Cir. 2004)).  
24 Accordingly, the Interim Policy violates the equal protection clause of the California  
25 Constitution for the reasons set forth *supra*.

1           122. As explained above, Plaintiffs have and will continue to suffer harm as  
2 a result of the violation of the Equal Protection Clause of the California state  
3 constitution.

4

5           **SEVENTH CLAIM FOR VIOLATION OF THE DUE PROCESS CLAUSE**  
6           **OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES**  
7           **CONSTITUTION – 42 U.S.C. § 1983**

8           123. Plaintiffs hereby incorporate by reference the foregoing paragraphs as  
9 though fully set forth herein.

10           124. “A fundamental principle in our legal system is that laws which regulate  
11 persons or entities must give fair notice of conduct that is forbidden or required.”  
12 *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 253 (2012).

13           125. A government policy, statute or regulation violates the Due Process  
14 Clause of the Fourteenth Amendment where it “is unclear as to what facts must be  
15 proved” to violate it. *United States v. Williams*, 553 U.S. 285, 306 (2008).

16           126. Such vagueness claims are actionable under 42 U.S.C. § 1983.

17           127. The Ninth Circuit has explained that the vagueness doctrine contains  
18 two separate requirements:

19           First, laws [must] give the person of ordinary intelligence a reasonable  
20 opportunity to know what is prohibited, so that he may act  
21 accordingly. . . . The vagueness doctrine’s second requirement aims  
22 to avoid arbitrary and discriminatory enforcement, and demands that  
23 laws provide explicit standards for those who apply them. A law that  
24 relies on a subjective standard—such as whether conduct amounts to  
25 an annoyance—is constitutionally suspect.

26           *Edge*, 929 F.3d at 664.

27           128. The Interim Policy violates the vagueness doctrine by prohibiting  
28 “caste” discrimination without defining that term. Indeed, it is not among the 44

1 other specifically defined terms in the Interim Policy. Ex. A, Interim Policy at pp.  
2 6–16, Art. VII(A)(B).

3 129. The term is so vague that people of ordinary intelligence do not know  
4 what conduct is prohibited by the Interim Policy. In fact, many of the CSU  
5 employees, professors, and students who are governed by the Interim Policy are not  
6 familiar with the meaning of the term “caste.”

7 130. The Interim Policy does not provide explicit standards sufficient to  
8 survive a vagueness challenge.

9 131. Thus, the Interim Policy is unconstitutionally vague in violation of the  
10 Due Process Clause to the extent that it prohibits discrimination based on “caste.”

11 132. Enforcing the Interim Policy will not only cause Plaintiffs (and others  
12 similarly situated) to live with the fear of being disciplined for committing  
13 discrimination they did not commit, such accusations – and indeed the mere  
14 stereotypes and implicit bias the Interim Policy has perpetuated – will follow them  
15 throughout the rest of their careers, potentially having negative implications such as  
16 the denial of tenure or the loss of their positions in academia.

17 133. Similarly, because the Interim Policy does not describe what  
18 repercussions exist for alleged “caste” discrimination (or even explain what “caste”  
19 discrimination is), *any* employee within the CSU system, regardless of their ancestry  
20 or actual religious beliefs, could be subject to losing privileges at the university, their  
21 tenures, or even their professorship positions, if they are even *accused of* caste  
22 discrimination.

23 134. Unless Defendant is enjoined and restrained from enforcing the portion  
24 of the Interim Policy applying caste as a Protected Status, Plaintiffs will be  
25 irreparably injured, as they will be deprived of their rights under the United States  
26 Constitution forever.

1           135. As Plaintiffs' constitutional violations are ongoing and capable of  
2 repetition, Plaintiffs are entitled to injunctive relief.

3           136. Because Defendant's actions required Plaintiffs to retain counsel and  
4 incur attorneys' fees and costs to bring this action, Plaintiffs are entitled to the  
5 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and  
6 42 U.S.C. § 1988(b).

7

8           **EIGHTH CLAIM FOR VOID FOR VAGUENESS UNDER THE**  
9           **CALIFORNIA CONSTITUTION RELIEF**

10          137. Plaintiffs hereby incorporate by reference the foregoing paragraphs as  
11 though fully set forth herein.

12          138. "A void for vagueness challenge can be brought under either the  
13 California constitution or the Fourteenth Amendment of the U.S. Constitution."  
14 *Nat'l City Puppy, LLC v. City of Nat'l City*, No. 19cv1942, 2019 WL 5550247, at \*2  
15 n.1 (S.D. Cal. Oct. 28, 2019) (quoting *People v. Toledo*, 26 Cal. 4th 221, 228–29  
16 (2001)); *see also Martinez v. City of Fresno*, No. 1:22-cv-00307, 2022 WL 1645549,  
17 at \*12 (E.D. Cal. May 24, 2022). Accordingly, the Interim Policy is void for  
18 vagueness under the California Constitution for the same reasons it is void for  
19 vagueness under the Federal Constitution.

20           **PRAYER FOR RELIEF**

21          **WHEREFORE**, Plaintiffs respectfully pray for judgment against Defendant,  
22 in her official capacities, and relief as follows:

23           a. For a preliminary injunction enjoining Defendant from enforcing  
24           the Interim Policy to the extent that it prohibits discrimination  
25           based on "caste";

- b. For permanent injunctive relief preventing Defendant from enforcing the Interim Policy to the extent that it prohibits discrimination based on “caste”;
- c. For a declaration that the Interim Policy is unconstitutional to the extent that it prohibits discrimination based on “caste”;
- d. For attorneys’ fees and costs; and
- e. For such other and further relief as this Court deems just and appropriate.

Dated: February 28, 2023

Respectfully submitted,

*/s/ John Shaeffer*  
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